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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/853,292	05/09/97	TOVEY M	23164-1003

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EXAMINER	
FITZGERALD,D	

ART UNIT	PAPER NUMBER
1646	12

DATE MAILED: 06/30/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.	Applicant(s)
08/853,292	TOVEY, et al.
Examiner	**Group Art Unit**
David L. FITZGERALD	1646

THE PERIOD FOR RESPONSE: [check only a) or b)]

a) ☐ expires _____ months from the mailing date of the final rejection.

b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on *18 Jun 1999* **has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:**

☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☒ will not be entered because:

☒ they raise new issues that would require further consideration and/or search. (See note below).

☒ they raise the issue of new matter. (See note below).

☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: *See attached.*

☐ Applicant's response has overcome the following rejection(s):

☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.

☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: *NONE*

Claims objected to: *NONE*

Claims rejected: *1-18*

☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

☒ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). *10* .

☐ Other

Refusal of entry of the amendment

Applicant has not indicated how the proposed recitation of "systemic" is supported in the disclosure as filed. Entry of the amendment would thus compel consideration of questions of new matter. Additionally, as the amended claims appear to require limitations not expressly addressed in the final rejection, entry of the amendment would also compel consideration of new grounds of rejection under 35 U.S.C. § 102 and/or § 103.

Because applicant's arguments relating to patentability are directed to the amended claims, they do not respond to the outstanding grounds of rejection.

Arguments relating to the duplication of claims

Applicant urges that "type II" IFN is generic to the specific IFN-γ. This argument is not persuasive because, as discussed in the final Office action, the two terms are synonymous, and "IFN-γ" is generic to all γ-IFNs known in the art. The arguments relating to enforceability under the doctrine of equivalents do not provide justification for maintaining two claims delimiting identical inventions as construed with reference to the appropriate time, *i.e.*, the time the application was filed.

Information disclosure statement

The Disclosure Statement filed 01 June 1999 does not comply with 37 C.F.R. § 1.97(d) because it was not accompanied both by the certification required under § 1.97 (e) and the petition and fee specified in § 1.97(d). The cited information has been placed in the application file but has not been further treated or considered.

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29 June 1999